

5  
(5)

# REASONS

FOR A

## New Bill of Rights:

Humbly submitted to the Consideration

OF THE

## Ensuing Session

OF

## PARLIAMENT.

---

L O N D O N :

Printed in the Year 1692.

REASONS

John Willacott Esq.

Parliamentary

PARLIAMENT.

LONDON:

Printed in the Year 1833.

# REASONS

FOR A

New BILL of RIGHTS, &c.

**C**onsidering the many impetuous and convulsive Struggles, which this Land hath so frequently groaned under, between the People and their Prince ; and that some Persons of Honour, Sense and Sagacity, have always been engaged in those Convulsions ; it must provoke an Agony of Wonder, that no more or better Provision is hitherto acquired, for the Ensurance of Mens Lives, Estates and Liberties.

The Defect can be ascribed to no other Original, than the sudden Cesser of violent and eager Essays for that purpose, which Violence is seldom durable, and therefore the Occasion of its own Disappointment ; but now in the present Circumstances, when a Foreign War hath employed the warmer and more sanguin part of Mankind, and an entire Calm o'respread the Face of Domestick Counsels and Affairs, the Season perchance is arrived, for a mature and sedate, and consequently successful Consideration of sound, proper and true Methods, to secure Ourselves and Posterity in these Particulars.

However a provocative of this kind can never be unreasonable ; tho' Provisions of Money in the approaching Parliament will be one thing, yet it cannot be the only one necessary, especially when a Flaw in our Title to any of these Ingredients of Bliss, destroys the necessity of that : It is therefore to be hop'd, that the Courtier, Statesman and Officer will permit the Country Gentleman in some soft Degree, to attempt the Supply of his own as well as their Occasions ; nor can the Proposal of the one obstruct the just Progress of the other ; for it is the old fundamental Doctrine of a true *English* Parliament, that they should always concur, and now there's Reason and Opportunity for both.

To obviate Prejudice and Objection against a perusal or regard of the following Lines, it may not be amiss to premise, That the Author is neither Republican nor Enemy to the present Establishment ; nor can the usual Artifice of Nicknaming a Proposition as Antimonarchical, render it the less acceptable to him that's concern'd, as every *Englishman* formerly was, is to day, or may be to morrow, in this : It is too well known to have been an ancient as well as modern Court-trick, to advise Kings from encouraging, and the Commons from prosecuting of a full Security by just and rational means, with the terror and dread of a Commonwealth, as the unavoidable consequent of a true Liberty, tho' whoever knows Men in *England*, must also know that Figure of Government here to be impracticable : But methinks since the Discovery of Priest-craft in Religions, and the Detection of Intreaguery in State Matters, Men should be wiser, than to slight or reject Endeavours for their own Happiness, because of Names, Titles or Epithets if of an harsh Sound, tho' improperly applied :



I am sensible of another Objection from the *Bill of Rights*, but surely that Scruple vanishes upon the first Reflection ; for the nicety of the then Circumstances, the multitude of incurring Exigences both at home and from abroad, may well be agreed to have hindred a plenary or sufficient comprehensive Thought of all our then Grievances : It must be confessed, that the Instances there mentioned are considerable and great, and the Provisions made for them are useful and good, though too generally expressed, and perhaps obnoxious to some different Constructions, whensoever reduced or applied to particular Use ; the Settlement of Religion and Church-mens Property by those *Items* is politick and happy ; and in truth the *Bill* doth extend to little more than that, and the Health of Corporations ; but the Acquirement of those Reliefs, was never intended to be exclusive of more, if more appeared necessary ; the private Lay Gentlemen deserve some Consideration, for their Number exceeds both Clergy and Officers, tho' the latter are sufficiently numerous ; nor is the Ballance of the Gentry inconsiderable in the Government.

Another Cavil is expected at these Papers as needless, because the Judges are fixed and free from Temptation, their Patents are not now upon Pleasure, and those at present in *B. R.* (where the ensuing Queries do most frequently arise, and are most properly determinable) are Persons endued with Learning, Probity and Resolution.

Agreeing all this, and more, that they are, and so indeed they are, the Glory of the whole Revolution, it doth yet still remain worthy of a Thought that they are mortal, and another King may arise in *Israel*, that may make another Choice ; and notwithstanding they should

should be more independant, through the certainty of  
 their Office and Salaries, then formerly, yet it may be of  
 Men temptable by the accrue of a greater Pension, or  
 the like; it cannot be forgot what some Ministers have  
 rung in the Ears of former Princes, that Hearts not  
 Heads, were necessary for that Court; that the Humour  
 of the Man, and not his Knowledge in the Law, was the  
 most considerable in the Election of a Judge; that Com-  
 plaisance to Prerogative was a much better Quality than  
 that of a judicious and crabbed, if Stubborn Lawyer: But  
 further, we should deserve the Pity of Fools, if after so  
 much Treasure and Blood spilt for the Redemption of  
 Liberty, the same should be ascertained by no better a  
 Fund than the Life of three Men at the present in Pow-  
 er; nor can their Preservation ensure *Englishmen* against  
 Hardships in the subsequent Cases; for this Proposal  
 evinces the Imperfection of our Laws as now received  
 and practised, and the necessity of another Statute to ex-  
 plain or amend them: And therefore this Objection  
 is an Argument rather to inforce than to discourage the  
 Prosecution on't; for sure we are, these Judges will  
 and must (as by Oath obliged) observe those Rules; and  
 from thence springs the true Cause for new, but better  
 Provision; nor do those Remarks aim at or import Refle-  
 ction upon the present Practice, but merely endeavour to  
 demonstrate the necessity of a Law or two more; now  
 new Laws do not always suppose Faults in *Fact*, but  
 many times in *Posse*, they are as often made to obviate  
 as to relieve against Grievance and Oppression; and  
 were it otherwise, this is no more then every Act of  
 Parliament past hath done; and therefore such new  
 Law (as is here contended for) doth still appear neces-  
 sary.

Now

## Now for PARTICULARS.

*First*, As to Life; the late Bill for regulating Trials in Cases of Treason is a clear Evidence of the imperfect Defence which the Laws in being afford to Mens Lives; the Misfortune which attended that Bill doth call for a Reinforcement of that Design; the Opposal it met with (considering the Persons who made it) doth in a demonstrative manner declare its Conveniency and Necessity; and therefore the honest part of the Nation do hope that the next Session will pass that or another such; nor is there any Reason to despair on't, unless Men improve in their Fondness of Danger, even of Death; for no Person living can be undoubtedly secure, that he never shall become or be deemed a Malecontent; both which are one in point of Danger. As to the pretended Reasons against such Relief, a Line of Answer is more than they deserve; but however to propose some hints convictive of their Weakness may not be improper: It argues some Defect in thinking to pretend that the 25 of *Edw. 3.* hath governed our Forefathers, and hitherto the present Age, and therefore we need no other Law; for might not this Objection have damned the Petition of Right, or any or every other Act of Parliament, because we had a *Magna Charta* before; besides Innovation and the dismal Consequences on't was always a Bugbear both in Church and State to prevent Alterations even for the better; but wise Men, if honest, have as often contemned the Pretence as ever it was objected, or otherwise we should have wanted that Pillar of Security which we have acquired already; but do hope to increase. It is manifest

nifest upon the First, Second, Third, and every Reading of that Statute, that 'tis a general, uncertain and obscure Provision, sufficient Confusion, Doubt and Contradiction hath there been in expounding it; the Chronicles and Reports of every Age since *Edward 3.* proves this, nor can our own Observations fail of furnishing us with Arguments of infinite Difficulties resulting from that Law, and many with Semblance of Reason and Authority on both sides; the late Paper skirmishes about the unhappy Lord *Russell's* Case do prove the need of a new explanatory, directive Act; as also the new Notions vented in the Earl of *Stafford* Case about Witnesses to several Facts or rather Circumstances which have preceded it almost to every subsequent Trial: Then in the Name of God, what Harm can accrue to the Publick in general, or to any Man in particular, that in Case of State Treason Council should be allowed to the Accused, what Rule of Justice is there to warrant its Denial, when in a Civil Case of a Halfpenny Value the Party may plead either by himself or Advocate: That the Court is Council for the Prisoner can be no effectual Reason, for so they ought to be in every Action, unto each Party, that Right may be done; but the *Frenchman's* Remark upon this Phantom, for 'tis no more hath sufficiently censured it, *That my Council ask no good Questions for me, my Council make no good Sign for me, me no like my Council.* And it hath too often proved according to that poor Fellows Observation; nothing but Practice, *No written Law excludes from Council in any Case,* (says the great and late honest *Coke*) and there is the same pretence for denying a Copy of the Indictment, though that has been granted in case of Felony in one *Bothe's* Case, the which is in a Book called, *More's* Reports.

But

But some bold Whisperers do pretend, that the Times are, or may be dangerous, the Crown ought to have a Power to support it self, this will make Convictions difficult, the Government must sometimes have a Lift, there must be Methods to lop off an Enemy, or the Head of a Party now and then, and there is no better Convenience for it than a doubtful Law, and therefore no Explanation or Amendment is politick.

'Twas thought that these Principles had been abdicated with the late King, but since their renewal calls for an Answer, I'll briefly observe to those which vent them, that all Humane Affairs are so unstable, and Courts under several, nay, under the same Sovereigns, do so often change Interests and Inclinations, and consequently Parties, that 'tis possible a malicious Chance may make the Enemies Lot to become the Objectors; and so hath Fate most frequently doomed it in a most smart and Exemplary Form upon the Opponents of their Country's Liberty, that they have been lasht with that very Rod which they have refused to remove, have endured that very Oppression, which when in their Power, they denied to redress: *English* Story is too full of such Instances, and God forbid the increase of them again.

This Objection is absurd and subverts Fundamentals, for in such extraordinary Emergences of State and Consequence, the Parliament is, or ought to be at hand; the Use of that Assembly is not barely the Gift of Subsidies, but to help the King and People according to their respective Occasions,

and there is the Crown's *Recipe*, Impeachments or Bills are his infallible Remedy ; and our Constitution never intended any other Relief in case of such Difficulties, than that of a Parliament : Then if we consider the strict Rules of common natural Justice, 'twill appear, much more eligible, that sundry Offenders should escape, than one innocent should suffer, for that such Cases admit of no Restitution, the Reversal of an Attainder injuriously procured, cannot render a Satisfaction ; the Head returns not to the Shoulders, nor Life to the Party, tho' the Title be restored to the Name, and the Estate to the Son of such a Martyr.

It is evident beyond contradiction, that within twelve Years past, many would have resigned the half of their Estates for the procurement of such a Law, as now ( to the wonder of the Nation ) themselves have opposed : The Fact admits of no Reason but Revenge or the Change of their Principles upon the Occasion of Power and Employments, each whereof is alike unmanly and therefore unwarrantable ; but methinks they should consider that they are not certain of the stability and continuance of their present Settlements, much less of their Interests, and the same Occasion as formerly, may in future Ages revive, and then the Reviver of Complaints with their Suffering may be fruitless and vain, when the Opportunity of Relief is fled and gone ; not good Hopes concerning future Administrations but good Laws only, that can give a Plerophory or full Assurance of Security : Now is the Season, if ever, for a Fixation of our Franchise from the Perils, from  
the

the actual endurance whereof we are but just delivered ; it may be presumed, that the late turn of our *English* Affairs is not yet banished our Memory, nor the end of the Change buried in Oblivion, and the present Proposal was unquestionably one Design of the Revolution : The Convention of the Estates of the Realm in Eighty eight, eighty nine, intended somewhat more than the Ejection of Thirty or forty fat Officers, and the preferring as many other in their places, tho' of the more intelligent and honest Principles, for these are still Men, and liable at least, I will not say prone, to humane Infirmities, and tho' not possibly equal, yet like to those of their Predecessors : The Purpose of the Nation's Wisdom was to gain a Security beyond the reach of Construction, Power or Craft to evade, and if the same be not hitherto accomplished (which whither it be or not, let the Reader be Judge.) It is now therefore the Duty of all sincere and true *Britains*, to endeavour the Perfection of such their Security against every of their former or the like Mischiefs ; the Necessity of the War summons a Parliament for Supplies, and this renews our Opportunity for to finish the intended Errand of the First Assembly after the Abdication : *This is the Time*, said a great Man upon a less Occasion, and every Man may say the same now, and with more Reason : Then as to the Second concerning our Estates.



It cannot be denied, that both Law and Equity do in their Practice need a Regulation ; the Exorbitances of that Prerogative Court called *Chancery* do loudly cry for a Bridle, and that by an Act of Parliament : There 'tis that the single and sudden Thoughts of a Keeper are the only Rules for Justice, and the Power is but *Durante* (it must not be said) *secundum bene placit' R.* and this may caveat the Rich and Bulky to promote some moderate Reformation of that Court, or else to resolve, that his Quarrel shall never be with a Courtier, and that he'll never incur the infortunate Character of disaffected to the Government ; for it hath been formerly, and may be hereafter very easie, with one of those Monosyllables Fraud and Trust (which have already almost devoured every other Title in the Law) to decree such a one a Beggar ; Nickname his Purchase and his Estate doth instantly change its Owner ; then if a Commonner prove his Adversary, whose Inheritance commands a *Borough*, the Wretch is remediless, and his Beggary everlasting ; for there's no Appeal but in Parliament, and with his Hopes of Relief commences Priviledge, and then he must wait, at least till the Issue Male of the Family be extinct, and that is too long an Expectancy to be called a Relief : To expose the Dilatories and Expences of that Court is a Province much fitter for some Lawyer's Pen than mine : My only Remark is this, that that Court is too dependant upon another, that its Power is too Arbitrary, and its pretended Rules too uncertain ; and although the Probity of the present Keepers do prevent Mischief at the present, yet future



ture Reigns may use Creatures of a worse Kidney, and to worse Purposes, and then the Authority of the Seal as now in practice, will afford Opportunity to do Mischief more then sufficient : Then for the Law, it must be agreed to stand in the like need of a Purge too ; but such Topicks would be proper to employ the Head of some Practitioner, whose Experience capacitates him to discover its blind side and corruptions ; that which I observe is this, that there wants some Act to facilitate the Practice of Attaints, by allaying the severity of the Judgment therein, and then we might hope to see Corruption of standing Juries reformed, and the Consequences of that Corruption banisht too, viz the forc't Practice of granting New Trials, when the Verdict displeases the Judge, though the Fact be not within his Sphere ; at our Assizes I have for several Years observed a great uncertainty in the Rules of Evidence, in the Gift of Actions, and in the Notions both of Titles of Land and Property in Goods, every Circuit perhaps differing from the last, but that seems ascribable to the great Latitude given to the sudden Opinion of a Judge by the predominant increase of General Issues, which leaves too much at the Discretion of a single Person : These and many more hints might be given of this kind, but of this enough, for they are Trifles to my last and chief Topick, because, concern but a few ; for Men with Temper and Wisdom may easily prevent the Plague of Law Suits, and the want of one of them is generally the cause of Vexation either by Common Law or *Chancery* ; but there's no Fence  
against

against Imprisonment, for the cast of a Man's Eye, the Smiles or Frowns of his Face, entire Silence or too much or too little Speech, as the Company pleases to interpret and represent, may raise Suspensions concerning Principles : If he keeps company he is judged by the Humour of that, if he keeps none he's thought reserved, and therefore the more dangerous ; if a Maggot in his Head or a fanciful Thought in his Brain occasion a Laugh when ill News is arrived to the Court, or if the Distasters of his Personal or Family Concern, or a Pain in his Body provokes a sour Look upon the talk of a Victory or the like, these and a thousand more such are Badges of Malice to the Government, where Construction is at liberty, so that the following Doubts are of consequence to every one.

*Thirdly*, Liberty of Person ; 'twould be Subject of Ridicule and Jest to attempt the Conviction of our Countrymen, that Liberty is pleasant, and to preserve it deserves our Care : It's one of our first Principles connatural to an *English* Heart, to be tender and jealous of its loss and Abridgement. The Contentions here both with Tongue, Pen and Sword for its continuance hath proved such a Theme needless ; our *Magna Charta* places the contrary in equal rank with Disfranchisement and Exile, both which are sufficiently odious, the one depriving a Man of his Country, the other of his Fortune, and this debars him of the Pleasure, nay Use of both ; 'tis pretended by all the Judges, that Liberty is the Darling of the Law, and Restraint the Badge of Bondmen and Vassals

Vassals, but the Practice in almost all Ages hath given the Lye to such pretence ; for nothing hath been so often and easily lost, to Peers and Commons, to the Grandees and the Peasant, upon every little or no Suspicion as personal Liberty : That particular Piques or private Malice of State Ministers or perchance that which is less cause ; the insolent Humour of Commandments in Power, or the generous Behaviour of a Gentleman with its usual attendant Popularity, (which is always an Eyesore at Court) or the Fears of Statesmen tho' resulting from their own Weakness when there's no Danger, or from their own false Steps in Government. Where there is these and such like Occasions, have frequently goaled great Numbers of the best part of the Nation in all Ages : It must be impertinent to recollect Instances, since Members of Parliament have not been free even in Parliament time ; as for the Oppressions of which Imprisonments, whosoever hath suffered them is sufficiently convinced, and he that hath not, may easily conjecture ; for much the greater part of the Nation either by themselves or their Friends and Acquaintance hath experimented the Pleasure of such forc'd Retirement, within less space then Forty Years past, and therefore I'll forbear to enlarge on't.

The Cause of this Grievance hath sprung from the Imperfection or Uncertainty of our Laws concerning this Subject ; the Questions about it in *Car. 1.* Time, were so fiercely debated, not only within the Walls of the Commons House, but in the Press and Field too, that their Notoriety recalls them

them to every Mans Remembrance ; the Opinions of Parliaments was always against indefinite, general, or causeless Commitments, but no Man imagined himself secure till the late *Habeas Corpus* Act, which inflicted Penalties upon its Violators, nor hath that accomplish'd the Design of ensuring a true Liberty, as I shall now endeavour to demonstrate ; that this Act was, and is a wholesome Law, cannot be denied, and 'twas worth the Price it cost ; but yet another will deserve twice as much, for the former is deficient to a great Degree : To convince that it is so, let it be considered that 31 Car. 2. did that Statute pass the Royal Assent, and since that time Five hundred Persons to one have been committed more than ever were tried, or so much as indicted : It is observable that every Year or two, a dozen or twenty Lords are usually shopt, together with incredible Numbers of the greatest Commoners, over and besides the small Fry of &c. Halls and Churches have been turned into Prisons when the common Goals were crowded even to danger of Infection ; and I am apt to believe that hundreds have been committed without Oath, and consequently without just cause of Suspition, for there ought to be Oath of that Fact or Circumstance which rendred the Party suspected : And this is the first Defect in the Statute, that it doth not enjoyn an Oath to be mentioned in the Warrant, which is unquestionably consonant to Reason, that the Person and his Judges may become privy to the true Reason of his Commitment ; perhaps it may not be for the Service of  
the

the Crown to name the Informant upon the first Accusation, but that no Commitments ought to be without Oath first made, is certainly Law ; and an Injunction to mention an Oath in the Warrant, together with a Penalty for Imprisonment without Oath in Writing, will make the Ministers concerned more cautious in cases of Liberty ; nor can any Reason be assigned in Nature why Priviledge should not be denied by Act of Parliament, in case of the Violation of the Subjects Freedom, which is and ought to be dear to us all : The end of frequent Parliaments is for Maintenance of Personal Liberty, and why such frequency should hinder Suit for Incroachments on that Liberty, the Reason is behind the Curtain : Another Fault is, That the cause of Commitment is not enjoined to be specially signified, charged for compassing the King's Death, or adhering to his Enemies, is in truth no more special or plain than to say for Treason, for there are a Thousand Acts and Ways of doing both these, and those dependant upon construction, so that a Man is not a whit the better informed to prepare for his Trial or Defence by the one than by the other ; for when he considers of one Action obnoxious to strain, another, a third, or a hundredth may be trumped to his Charge ; the end of that Provision certainly was, to have the Fact known whereof the Party was accused : Again, Warrant to seize being charged for High Treason *in compassing or adhering, &c.* and to *bring before me to be examined*, and such Messenger to detain for Days, Weeks and Months, seems somewhat unreasonable, when the Party granting such Warrant expresses him-

self doubtful in his Judgment concerning the Charge; and the Fact indeed to need an Examination, yet this Case is notailable; whether Secretary or Privy Councillor, not having actually taken the Oath of a Justice of Peace can commit for Felony or Treason, is no small Query, but the Ferments of latter times, and the supposed Necessity arising from thence hath answered that Problem by some Years Practice, and therefore that Point is not to be stirred without doors, but surely they ought to be in the same State as other Justices, to answer Suits for unjust or wrongful Restraint of Mens Persons, and the Greatness or Priviledges of these Officers ought not to exempt from common Actions, but the rather an Access to Relief against them, should be made more easie, since they monopolize that Trade, and consequently are more frequently liable to Mistakes wilful or by accident; the Method for such Relief is above my reach either to contrive or propose.

When the Cause is only Suspicion, Bail and that at Discretion of the Judge is now required, and this is all the Relief at present, and that is tantamount to none; for if the Judge or Minister pleases, such extravagant Sums and Estates may be required, as to render the Party remediless, and his Continuance in Goal inevitable; here's no Measure prescribed, nor any Penalty imposed on the Judge if he be guilty of Excess in such his Demand:—In case of an actual Breach of Peace, and the Complainant swears a Danger of his Life, the common Rate is 40 *l.* Principle, 20 *l.* a piece the Bail; but for Suspitions of Treason, or as generally disaffected to the Government,

ment, swinging Sureties for Bulk in their own Estates, and Sums in their Recognisance, have been and may be again exacted, and no Relief.

Commitments with the Clause of denying Pen, Ink and Paper, or Friend or Relation, are not provided against, nor yet in truth warranted by that or any other Law ; for if the Party be not guilty of the Charge, or but suspected without Evidence sufficient, the Usage is not Humane or *English* ; if he be guilty and there's Evidence for such Guilt, then Liberty of Access ought to be allowed to his Friends with the Use of Writing, that he may prepare for a Trial: For the Law never impowered a Secretary to commit a Man because thought dangerous to the Government, but because he is guilty of a Crime, and that he is only to secure him to be forth coming to a Trial, not to punish him before his Trial, for till then it remains in doubt whether guilty or innocent.

Another Defect is this, Suppose a Man committed in *Trinity* Term for the Charge of Treason, and after the expiration of four or five Months, and before the arrival of *Michaelmas*, the Secretary thinks fit that Bail be admitted, then tho' no Indictment or other Prosecution, this Bail may be continued from Day to Day, and from Term to Term, for seven Years together, and he can't help himself ; within the Memory of Man this hath been practised for seven, nine, nay twelve Terms successively upon the same Recognisance ; then it is an infinite Default, that if a Man be committed to a Country Goal, and perhaps that may be, as it hath been, to *Hull* or *Canterbury*, this Man is remediless till an Assizes, and



that sometimes not happening in several Years, and then this Wretch can't make his Prayer in *B. R.* he hath not Money to procure a Commission of *Goal Delivery*, or *Oyer and Terminer*; and if he could, perhaps 'tis denied him, and no Provision made against such Denial : Now here's an indefinite Imprisonment, this Difficulty arises from a constructive Opinion upon that Law, that the Prayer may be either in *B. R.* or before *Oyr* and *Terminer*, as to be taken distributively and respectively, if here about Town in *B. R.* if in the Country then at the Assizes, tho' the Words are general, one or the other.

Further the Remedy is, *If no Indictment the first Term, the Party is to be bailed, unless Oath be made that the King's Witnesses could not be produced that Term* : Now this needs an Explanation for the end of our Law-makers unquestionably was, that he should be bailed, unless there was Evidence sufficient whereon to indict, and such Evidence, could not be produced ; whereas according to a littéral Construction of that Clause, any Man may be detained tho' not Evidence enough to found an Indictment, as if Oath be made that there is Evidence against *A. B.* and *C.* and every of them, that the Witnesses against them could not be produced, and no possibility to convict the Jurate of Perjury, for it may all be true in some Sense (and if true in any Sense it excuses from Perjury) and yet besides the Intent of the Law to have the Persons detained, there might be two Witnesses, one against one, and another against the other, and yet no Indictment could be on this for want of two Witnesses against each : Now 'tis plain when the Law says,



says, *If he be not indicted he shall be bailed, unless Oath be made that the Witnesses could not be produced*, it must be meant such Witnesses as could swear to the Indictment, which one alone could not, because the Statute requires two even upon the Bill, besides such literal Construction renders the *Affidavit* Maker Judge of what is evidence, when perhaps he is ignorant of the thousandth part of the Difficulties and the Doubts upon that Subject ; then for *could not be produced*, 'twould be but reasonable that the Court should know and judge of the Reason of the *Non-produce*, and not the Swearer ; perhaps the Reason might not be sufficient in the Court's Opinion, but more than sufficient in the Swearers ; he might think an Horse-race or Wedding, want of Pay or Recantation, or Forgetfulness of part of his Testimony, a Reason ; nay, the Witness might be dead, and yet his Oath true, for there might be Evidence by Papers, and one Witness to prove them, and the other Witness departed, and so could not be produced ; though these Thoughts are equivocal, yet they'll deliver him from the Charge of a wilful, false, corrupt and devilish Perjury ; these short Notices are enough to shew an Occasion of an additional, explanatory Act.

Another Defect is this, That if committed to any Goal in *Wales* as a dangerous Man, or upon Suspension of Treason, he is remediless by this Law, unless he has Money to pay for a Journey to *London*, and that must be paid down before he shall be brought ; for no Judge or other Authority there is bound to bail him, and then if he lies till their Session of  
Goal.

*Goal Delivery*, he can't be bailed upon the want of an Indictment, because the Treason is not specially signified; and then he is left as at Common Law, and how uncertain and merciless a Remedy that was before the making of this Act, we and our Forefathers have been sufficiently taught. A further Enemy to Liberty, is a Power still reserved to Judges of a Court, to commit upon pretence of Contempt to them, and this out of the Act, and such an Authority hath every little Petty Court of Record in the Nation, and Mistres Experience tells us, every slight Matter makes a Contempt to them, and there's no examining the Cause, for the Court that commits is Judge of the Contempt, and further there's no Deliverance, till Submission and their Discharge.

Add to these Opponents of bodily Freedom, the new found Offices of a King's Solicitor, &c. a Novelty never heard of till the latter end of *Charles II.* and the Subject has Reason to thank God that 'tis so late an Invention, for before that time the King had as few, and since hath had more Causes than any of his Subjects, 'tis from those Mutes that Characters are received, which extorts a bleeding in the Culprit's Pockets, for as that moves either open or shut, so doth the sign of a Shrug with the Shoulder, or a Wink tip upon his superiour Officer, produce Hardships or Ease to the trembling Goal-bird; perhaps the hint doth not take; and then there's a necessity of a secret Whisper, that the Bird in the Cage, is either a damned Tory or a confounded Republican, as the times respectively require; but if the Medicine requisite was duly applied, then with a Smile in the Face

Face and the Hand on the Purse as the Cause, proceed these or the like Words, *He is an honest, harmless, fair-conditioned Fellow*; and an immediate Assent to the Parties Bailment or Discharge is the certain consequent: In old time, the Ability of Bail was tried by Examination upon Oath in Court, but this new Office hath introduced a new Practice of giving Notes of the Names in order to Enquiry, and the Use and the Profit of such Practice is notoriously evident.

Lastly there's a Penalty on the Judge or Judges, if they deny any *Habeas Corpus*, but none if they refuse to bail or discharge, when and where they ought; then there's one thing more which ought to be considered, for it plainly spoils our Claim or Pretence of being a Free People, and that is the Power of our Lieutenancy as now established, for they are made and continued at the will of another, and they at their own wills may commit whom, and when, and for so long as they please; and as I am informed there's no relief, they sit and act whensoever they are bid, and compos'd in all places and times of some one predominate Party, for the Ballance can seldom be supposed exactly equal in such Assemblies, and by Consequence the lesser Party must expect their Mercy on every the least Occasion; now considering the Sides and Factions in *England* and their natural eagerness each against the other, and the small hopes there are of an Union, methinks true Policy should direct some measures and Rules of Restraint, to prevent Oppressions and Hardships on either part; the Form of making such Provision must be submitted.

These

These are but few among many Instances, which might be produced to evince the necessity of a new Law ; nor is it convenient for a private Person to enumerate every thing of this kind deserving Remedy ; it suffices to offer such and so many *Items*, as may excite the Parliament to consider of these and the other Mischiefs which need a Provision, and to continue Methods accordingly.

To conclude, a Word of Religion cannot be improper, the Act of Toleration hath exempted Dissenters from the Prosecution of the sanguinary and other Penal Laws ; but that Exemption is imperfect, for that a Force still remains on their Consciences in respect of their Children, for though themselves are not constrained to frequent the Legal Church, yet absurdly enough they are constrained to educate their Children in Methods contrary to their own Opinions and Sentiments, for no School is permitted them, though but to teach the *Assemblies Catechism*, and this seems inconsistent in it self, that their Judgments may be freely pursued in the one and yet restrained in the other, especially if a religious Reason induced the former, for if so the same obliges to the latter.

Now after all, the intent of these Lines is only to propose and not reflect, and surely thinking must convince Men, that such a Law would add to our Happiness, if procured ; nay, it seems strange that any should oppose it, since that the want of it may prove any Man's Misfortune, and no Man can be professedly desirous of Slavery, or dependance on another's Will for Liberty ; but to the Shame of our Nation, there

there are too many in it, that are willing to be Slaves to a few, so as many may be Slaves to them; and from that corner we expect an Opposition; therefore to provoke an Appetite and Zeal for true Liberty, let us consider our Government and its Nature; 'tis a Monarchy Royal (as an Attorney General hath confessed) and not Seignoral, and by our Law the Subject hath an entire, absolute, independant and uncontrollable Interest both in Land and Goods; now yet without Freedom of Person, and that ascertained, we are not Freemen but Villains, and shall *Englishmen* content themselves to hold their Liberty upon Will: Let us consider the Examples of our Forefathers and follow them, let us read and recollect how the Patriots of the last Age, *Coke, Selden* and the rest, did esteem and value it, when they tugged it so nobly in their Conference with the Lords, *Anno Car. I. Quarto*, though the Argument then was against General Commitments, yet their Zeal and Courage was true and cordial for Liberty in general, and to ought ours to require an ample and compleat Security on't: If we conceive our selves in person to be exempt from the Danger, because the Complaisance of our Principles may secure us from Hazard upon every Turn, let Generosity and a true *English* Good-nature raise a Concern for others, whose Discretion may prove defective upon such an Occasion; nay, the Inconstancy of Men and things may deceive even our selves in some Events, and bask such our Confidence.

D

Let

Let us be humane and pity the Miserable and Forlorn, that have been made so upon Suspicion only, during the Rage of other Mens Plots either real or sham, or that may become so hereafter upon the like Contingencies; to describe the Misfortunes of Patients in this kind, with their several Circumstances in particular and at large, wou'd I am confident, melt the Soul of the most obdurate Reader, and to affect him there would need no use of Rhetorick; my Request is only, that he would once visit our common Prisons and view those Lodgings, which have at several times received the best of our *English* Worthies, and perhaps some of his own Acquaintance; if this be too nauseous a Task, let him but frame an Image in his Mind, that he saw the Body of a disturbed Citizen, haul'd and dragg'd with Swords and Staves, from his House and Bed in the midst of Night; then consider him as bled by some Harpie of a Messenger for a certain Season, and with all listen to those insolent Huffs and Abuses of those insatiable Devourers of Coin and Liberty, during such his Bondage under their Dominion; then see him hurried to a Goal or Dungeon, there loaded with Irons in abundance, disabling him to sit, or lie, or stand, without actual and continued Torment, excluded from the Benefit of Light or Friend, Pen or Ink, Paper or Book, Fire or Candle, or other Help of Nature, then consider the Fears and Anxiety of such a Captive, either for himself, or Family, or other Relation, and that continued for Nights, Days, Weeks, Months; and invisible to any humane Creature, except some gripping Turnkey, whose Visits perhaps

haps are followed with the approach of some diabolish Tempter who comes to increase his Torture by the false Promises of Reward, if he will confess; discover and evidence some unknown Story; or else unhumane Menaces of an infinite Misery and Death as its only end in case of Refusal; then review him as alone, his Soul wrackt, tortured and distracted between the dread of Dishonour and Gallows, and his Keepers Usage changed (and that by Command of the tempting undertaker to facilitate his Design) and then the Wretch's Corps is reloaded with a double Train of Artillery, and therewith removed to a nastier Stry, if such there be, and immediately the Nick-hole of Light, if any, is stopt, and the Man left alone overwhelmed with Chains, Darkness and Stench, to which you may add the Disturbance of his Mind and Thoughts about the last Temptation, which is usually repeated while in this or the like condition; and here you may leave him a while to himself, and turn your Eye to his Wife and Children with Tears and trembling Attendant at the Grate, after having by Pawns or Beggary got some Guineas wherewith to soften (if possible) the Goalers Heart, you may hear them begging and intreating for a sight of this their Relative though at a Distance, nay sometimes praying for a Notice and view of those exterrors of those Walls, within which such their Dearest lies thus intomb'd, and even this shall be denied with execrable Reproaches and Insults, and all under Pretence of express Orders.

Then



Then follow those ambulatory Wretches and you'll find them making their Court to the Criminal, Agent, or his Deputy, for Leave to apply to the Secretary for Leave to see this *English Slave*, and this first Leave must be paid for too, or else there will arise an hope of Evidence with an Aggravation of his ill Character, and so an opposal of this their just and legal Right; but anon you'll meet them at *Whitehall*, where after four or five Days Expence in Waiting, and a Curtesie dropt with a Crown to the Porter, and two of them with double the Sum to the Footman, my Lord's Clerk becomes visible; and when both are doubled again to him, at last the Secretary is seen, but then her first Address proves certainly abortive, and the second procures only an Adjournment for Inquiry and Récollection after the much no Evidence, which however to her Assurance of the Accused's Innocence yield some Hopes, and then it may be the Widows Importunity extorts a Promise of Speech with King or Council about the Matter, especially if the Dun be followed close; But then Business of Necessity enforces two or three more Excuses, and at last if the Womans Patience, and Money can hold out to gain a frequent Access, so as to disturb his Lordship with repeated Crys and Tears, a Promise is made of an Order for Leave; now to tire the Reader no longer with these Difficulties; upon Payment of expedition Money and the usual Fees, the Order is drawn and signed, and with Thanks and Joy received; notwithstanding all this Labour and Charge, this Order is not legible at the Prison, unless the Keepers Spectacles be gilt, and  
when



when allowed 'tis worth but little, for the Keepers Presence is commanded, and not a word must pass between Wife and Husband but in his Hearing, which frequently makes it a silent though mournful Meeting, for fear of Misrepresentation, and this dear bought Leave can serve but once, and its renewal in price comes little short of the first.

After all this, when the Man's Body hath contracted Distempers, and his small Fortune is quite exhausted, and his Employment with his Credit lost, and consequently his Family undone, and his Children, if not himself consigned to Parish Care ; then without Trial or Indictment *Ex mero motu*, of a sudden an Order issues for the Delivery or Bailment of this miserable Captive ; and this called, and must be owned as Grace, though nothing but Suspicion did found the Commitment, or that the Man was thought of a Party, or had been in company with some that were thought so, and some of them perchance had been dabling at Treason or it may be only at true Politicks ; and now what Reparation ever was, or ever can be made for such injurious Hardships ; this hath been *English Practice* and the same may be possibly repeated ? It is certainly therefore the Duty and Interest of our Senators to be wise, and consider and provide for their own and our Posterity now in this, their, and our Day.

Further consider Imprisonment as a possible and safe Instrument or means of Revenge even to Death, for there the Nod of a great Man may be an easie but effectual Guide to a Goaler (I need not add here any Epithete or harder Name than his own) to  
—pro—

provide unwholsome Lodging and worse Diet for his Enemy, especially if he be of a tender Constitution, and then 'tis finishing Work, without the useless Formality of a Challenge, or the ignoble Method of Hirelings and Assassins, or the more base Fatigue of belabouring Witnesses and managing Juries, in all which there's somewhat of Danger and Hazard to the Avenger, and this hath been practised too in *England*.

When these particulars are duly considered, with the pretty tickling Retirements of the Nobles and Rich of our Realm, and those repeated several times in one Age and Year, and without Evidence upon some of them, it may be justly expected, that such Consideration will create an Abhorrence of the least uncertainty or doubtfulness in the Laws of Liberty.

Some will object that these Proposals will embarrass the King's Affairs in the next Session and therefore unreasonable; but this Objection doth answer it self, the Occasion for Supplies at present makes our Relief probable in this Conjunction, which upon another Meeting may find greater Opposition; and if the last Session countermined part of this, a future may dam the whole, therefore now if ever is the Attempt convenient; Besides a sound Zeal for the present Government, cannot be better testified, than by a cheerful Promotion of such Laws, for that these Methods do conciliate and fix the Interests, Opinions and Affections of the People to the Crown, and a Sense of present Ease, Safety and Liberty, with a certain Security of its Continuance is  
the

the surest Preservative of Duty and Assistance from the Subject. ~~Whereas~~ an opposition hereto, must make the Government lose ground by narrowing of its bottom; for that which crosses the Interest must alienate the Affections of the People, and this hath been found true in Three Reigns already within our Memory: No Authority or Power can be so considerable and lasting, as that which is founded on Love and Esteem, and those can never be acquired with any great Certainty, but by the Allowance of such Concessions as the People need, or think that they need, and do desire, or demand: Now the Mis-carriages of former Reigns with the Observation of the *French* and others Tyranny, which multiplies Commitments upon slight Fears or Suspensions, are so continually in their Minds and Mouths, that their Belief of the need of such Securities is not to be eradicated.

'Tis a gross Mistake to imagine, that an easie and full Power of chopping Men in Pieces upon a Block, or confining them to *Newgate* or other Goales, can add any Strength to the Crown, for *Englishmen* generally speaking are fond of a King, not only for his but their own sakes, and consequently such Fondness can be but of an equal Duration with their Ease and Liberty, and a Suretiship of its Permanency; for the Loss or Fear of the Loss of either, will quickly produce Aversion, and that Hatred, and that somewhat worse: upon which Account, tis incumbent upon all true Friends of their present Majesties, to promote this Prosecution of an Additional Security:

# POSTSCRIPT

At last it may be Queried, *What need of all this Bustle and Stir about Liberty, when Parliaments meet so often, that their Ave prevents all these and many more possible Oppressions*; to this I'll answer by another Query, *What new Security have we got, that if the War cease, we shall have a frequency of those Assemblies*.

## ADDED

It's a gross Mistake to imagine, that an entire and full Power of choosing Men in Places upon a Block, or confining them to Wargate or other Gates, can add any strength to the Crown, for England never generally speaking are fond of a King, not only for his but their own (free and equal) such fondness can be but of an equal Duration with their Hate and Liberty; and a servitude of its Permanency; for the Loss or Want of the Loss of either, will presently produce Aversion and that Hatred, and that servitude, upon which Account it is incumbent upon all the friends of their present Liberties, to promote this Protection of an Additional Security.